

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRY HEIN)	
Claimant)	
VS.)	
)	Docket No. 258,628
KANSAS DEPARTMENT OF TRANSPORTATION)	
Respondent)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Fund)	

ORDER

Respondent appealed the March 12, 2002 Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on September 12, 2002.

APPEARANCES

Matthew L. Bretz of Hutchinson, Kansas, appeared for claimant. Richard L. Friedeman of Great Bend, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges he sprained his ankle and fell while working for respondent on June 22, 1999, injuring his back and neck. In the March 12, 2002 Award, Judge Moore determined claimant sustained a 43 percent functional impairment to the whole body and an 83.5 percent work disability (a permanent partial general disability greater than the functional impairment rating) as a result of the June 22, 1999 work-related accident.

Respondent contends Judge Moore erred. Respondent argues claimant failed to prove that he injured his neck and back in the June 22, 1999 fall as claimant had tingling in his left leg at least four days before that accident. Respondent also argues claimant “has very severe veracity problems” and that the doctors that linked claimant’s symptoms to the June 1999 accident lacked accurate foundations for their opinions. Accordingly, respondent requests the Board to deny claimant’s request for benefits.

Conversely, claimant contends the March 12, 2002 Award is accurate as claimant has sustained a whole body functional impairment of either 43 or 44 percent and a work disability in the range of 83.33 to 88.89 percent.

The only issue before the Board on this appeal is the nature and extent of claimant’s injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and after considering the parties’ arguments, the Board finds and concludes the Award should be affirmed. The Board adopts the findings and conclusions set forth in the Award.

In summary, claimant sprained his right ankle and fell on June 22, 1999, while working for respondent. Claimant immediately reported the accident to his supervisor and within days of the fall claimant began experiencing problems with his right arm and both legs. While undergoing medical treatment, tests confirmed that claimant had a large herniated disc in his cervical spine, which was operated in October 1999 by neurosurgeon Dr. John Hered. According to the overwhelming medical evidence, claimant’s problems in his lower extremities, including the ongoing spasticity in his legs, were caused by the herniated cervical disc, which had compressed the spinal cord.

Claimant suffered a spinal cord injury due to the cervical herniated disc and also aggravated his low back. As a result, claimant has a significant residual functional impairment. Dr. Jose Amayo, who is a specialist in physical medicine and rehabilitation and who also treated claimant, determined claimant had a 43 percent whole body functional impairment under the fourth edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*. Orthopedic surgeon Dr. Lee R. Dorey determined claimant had a 44 percent whole body functional impairment.

The Board affirms the Judge’s finding that claimant sustained a 67 percent task loss as a result of the June 1999 accident. That finding is based upon the opinion of Dr. Dorey, who noted that claimant should not ever lift over 20 pounds nor carry over 10 pounds. Furthermore, the doctor opined that claimant should limit his driving to two hours per day and avoid prolonged sitting and prolonged standing.

Likewise, the Board affirms the Judge's finding and conclusion that claimant's permanent partial general disability should be computed using his actual wage loss, which is 100 percent as claimant is unemployed. In short, claimant applied for several positions with respondent after recovering from his neck surgery but respondent declined to place claimant in any of those positions. The only job offers respondent made to claimant were out of town and would have either required claimant to uproot his family and move from the Hutchinson area or required claimant to violate restrictions against driving more than two hours per day. The Board concludes claimant has made a good faith effort to find appropriate employment.

Averaging claimant's 67 percent task loss with his 100 percent wage loss, claimant has an 83.5 percent permanent partial general disability. Accordingly, the Award should be affirmed.

AWARD

WHEREFORE, the Board affirms the March 12, 2002 Award entered by Judge Moore.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and its Insurance Fund
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation